

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 01-0081

**Individual Income Tax
For The Period: 1996 through 1998**

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ISSUES

I. Income Tax: Residence/Domicile

Authority: IC 6-3-2-1(a); IC 6-3-1-12; 45 IAC 3.1-1-21; 45 IAC 3.1-1-22; State Election Board v. Bayh, 521 N.E.2d 1313 (Ind. 1988).

The taxpayers protest the proposed assessment of state income tax on earnings for 1996, 1997, and 1998.

II. Income Tax: Issuance of Proposed Assessments

Authority: IC 6-8.1-5-2

The taxpayers protest the proposed assessments issued on August 4, 2003, and September 19, 2000.

III. Tax Administration: Penalty

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2

The taxpayers protest the imposition of a 10% penalty.

STATEMENT OF FACTS

Taxpayers filed Form IT-40 PNR (Indiana Part-Year or Full-Year Nonresident Individual Income Tax Return) for the years at issue. The taxpayers claim that they were non-residents, living and working in a foreign country (hereinafter country X), for the tax years at issue. More facts will be provided as needed below.

I. Income Tax: Residence/Domicile

DISCUSSION

The Indiana Code 6-3-2-1(a) states the following:

Each taxable year, a tax at the rate of three and four-tenths percent (3.4%) of adjusted gross income is imposed upon the adjusted gross income of every *resident* person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person. (*Emphasis added*)

The statutory definition of “Resident” can be found at IC 6-3-1-12:

The term "resident" includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state, or (c) any estate of a deceased person defined in (a) or (b), or (d) any trust which has a situs within this state.

Also of import is the Indiana Administrative Code. 45 IAC 3.1-1-21 states in part that an Indiana resident is “Any individual who was domiciled in Indiana during the taxable year” or “Any individual who maintains a permanent place of residence in this state and spends more than 183 days of the taxable year within this state....” Domicile is defined at 45 IAC 3.1-1-22. The definition notes “a person has only one domicile at a given time even though that person maintains more than one residence at that time.” It goes on in pertinent part to note:

Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur.

In order to establish a new domicile, the person must be physically present at a place, and must have the simultaneous intent of establishing a home at that place. It is not necessary that the person intend to remain there until death; however, if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.

The determination of a person’s intent in relocating is necessarily a subjective determination. There is no one set of standards that will accurately indicate the person’s intent in every relocation. The determination must be made on the facts present in each individual case.

Finally, the Indiana Supreme Court weighed in on domicile in State Election Board v. Bayh, 521 N.E.2d 1313, 1318 (Ind. 1988), stating, “Intent and conduct must converge to establish a new domicile.”

Turning to the taxpayers’ arguments, they note the following. First, the taxpayers claim they

were physically present in country “X” and that they were not present in Indiana the requisite number of days required under IC 6-3-1-12(b). Regarding their Indiana home, they explain that after they failed to sell it that they rented it out. Taxpayers state that they “properly reported the rental income on tax returns from this [the home] for the years 1996, 1997, and 1998.” The taxpayers further explain that when the home did eventually sell, it was reported as “business property” and not a “sale of residence.” With respect to their tax filings, the taxpayers note that they filed IT-40 PNR. The taxpayers state they filed Federal Form 2555, which contains the “Bona Fide Residence Test.” According to the taxpayers, they had no intent to return to Indiana to live. They rented an apartment in country “X”. They obtained International Drivers’ licenses. They also state that they did not vote in Indiana during the years at issue. When their employer was sold to another company, the taxpayers returned to the United States.

The Department’s position is that the taxpayers never lost their Indiana domicile, thus the taxpayers remained residents under Indiana Code 6-3-1-12(a). The taxpayers had Indiana Drivers’ licenses for the periods of time at issue (in fact, one of the two taxpayers renewed his Indiana driver’s license on December 30, 1997). The taxpayers respond that to “obtain [an] International Drivers License you must have a valid drivers license previously. Therefore, to keep valid International Drivers license taxpayers elected to keep their Indiana Drivers license.” The Department also notes that on tax returns the taxpayers used Indiana addresses (P.O. Box addresses in Indiana for two of the years and an actual Indiana address for the other year). The taxpayers contend that the use of an Indiana “P.O. Box” was because the mail in the country they were living in was not as reliable as U.S. mail. The taxpayers also had W-2’s that indicated Indiana wages. The taxpayers stated on their returns that those W-2’s were incorrect/erroneous.

The taxpayers were assigned to live in foreign country “X” for three (3) years. The taxpayers claim that they “had no intent at the time of leaving Indiana to return to Indiana to live.” The taxpayers further state the following:

Taxpayers expected not only for the [“X”] stay to be extended, but to very probably be assigned to other parts of the world when [“X”] responsibilities were completed.

As 45 IAC 3.1-1-22 states, in pertinent part, “if the person, at the time of moving to the new location, has definite plans to leave that new location, then no new domicile has been established.” That is, the taxpayers had expected to “very probably” be assigned to yet another location in another part of the world, thus not establishing new domicile in country “X”.

The facts, when viewed in their totality, show that the taxpayers did not lose their Indiana domicile—they had Indiana Drivers licenses; they used Indiana addresses on tax returns; there were W-2’s that indicated Indiana wages; they owned what they characterize as “investment property” in Indiana; the foreign work assignment in country “X” was for a period of time (i.e., three years—though, according to the taxpayers, they thought it might be extended longer) and the taxpayers expected to be assigned to yet another location after country “X”; and lastly, the fact that they did return to Indiana.

FINDING

The taxpayers' protest is denied.

II. Income Tax: Issuance of Proposed Assessments

DISCUSSION

The taxpayers also argue the following:

The Department issued Proposed Assessment for the year 1996 on August 4, 2003. This is long after the statute of limitations had passed. Taxpayer had received a prior proposed assessment for the year 1996.

And further:

[H]ow can it be considered valid when taxpayer receives two Proposed Assessments, almost three (3) years apart

The date issued for the two proposed assessments for 1996 were September 19, 2000, and August 4, 2003. Taxpayers' 1996 IT-40 PNR was mailed to the Department in January of 1998.

The statute at issue, IC 6-8.1-5-2, states in pertinent part "Except as otherwise provided in this section, the department may not issue a proposed assessment under section 1 of this chapter more than three (3) years after the latest of the date the return is filed"

Thus the September 19, 2000 proposed assessment would be within the statute. The August 4, 2003, one would not be.

FINDING

The taxpayers are sustained regarding the proposed assessment issued on August 4, 2003; they are denied regarding the proposed assessment issued on September 19, 2000.

III. Tax Administration: Penalty

DISCUSSION

The taxpayers protest the imposition of the ten percent (10%) negligence penalty. The Indiana Code section 6-8.1-10-2.1 imposes a penalty if the tax deficiency was due to the negligence of the taxpayer. Department regulation 45 IAC 15-11-2(b) states that negligence is "the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer."

Subsection (d) of IC 6-8.1-10-2.1 allows the penalty to be waived upon a showing that the failure to pay the deficiency was due to reasonable cause. To establish this, the “taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed” 45 IAC 15-11-2(c).

The taxpayers state that they do not “believe that a valid dispute of alleged taxable income is willful negligence and believes the proposed penalty should be waived” Given the fact sensitive nature of the issue residence/domicile (*See supra* I.), the taxpayers’ position was incorrect but not unreasonable.

FINDING

The taxpayers’ protest is sustained.

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